

RESOLUTION NO. 2013 – 6

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY RATIFYING
THE ADDENDUM TO THE SETTLEMENT AND MUTUAL RELEASE OF
ALL CLAIMS DATED DECEMBER 22, 2005 BETWEEN THE COMMUNITY
DEVELOPMENT COMMISSION OF THE CITY OF NATIONAL CITY
AND THE BEAUCHAMP FAMILY TRUST

WHEREAS, the Community Development Commission of the City of National City and the Beauchamp Family Trust had previously entered into a Settlement Agreement and Mutual Release of Claims dated December 22, 2005; and

WHEREAS, the Parties had come again to a dispute about their relative rights and obligations under the Agreement regarding the appropriate amounts due for environmental cleanup costs; and

WHEREAS, this Addendum is a result of a meet and confer between the parties for the purpose of settling past claims for payment of environmental cleanup costs that the former Community Development Commission acting as the Redevelopment Agency (now the Successor Agency to the Community Development Commission as the National City Redevelopment Agency) had incurred and to restructure the process for the discharge of the Beauchamp Family Trust's responsibilities to reimburse the Successor Agency for future investigation and remediation costs.

NOW, THEREFORE, BE IT RESOLVED that the Successor Agency to the Community Development Commission as the National City Redevelopment Agency hereby ratifies the Addendum to Settlement and Mutual Release of Claims, fully-executed on May 29, 2013.

PASSED and ADOPTED this 19th day of June, 2013

AYES: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke

NOES: None

ABSENT: Donaldson

ABSTAIN: None



Ron Morrison, Chairman

ATTEST:



Brad Raulston, Executive Director
Secretary to the Oversight Board

APPROVED AS TO FORM:



Edward Z. Kotkin
Cummins & White
Oversight Board Counsel

ADDENDUM TO SETTLEMENT AND MUTUAL RELEASE OF CLAIMS

This is an Addendum ("Addendum") to the Settlement Agreement and Mutual Release of Claims dated December 22, 2005 ("Agreement") between The Community Development Commission of the City of National City ("CDC"), and the Beauchamp Family Trust ("Beauchamp").

The Agreement is hereby supplemented and modified as follows. Whenever there is any conflict between the Addendum and the Agreement, the provisions of the Addendum shall govern. Terms used in this Addendum and not otherwise defined shall have the same meanings given to them in the Agreement.

On February 1, 2012, the CDC became the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Agency").

The Parties have again come to a dispute about their relative rights and obligations under the Agreement, and having met and conferred and reached an agreement, now enter into this Addendum for the purpose of settling past claims for payment of environmental cleanup costs that the CDC/Agency had incurred at the Site and to restructure the process for the discharge of Beauchamp's responsibilities to reimburse the Agency for future investigation and remediation costs at the Site.

II. DEFINITIONS

5. "Past Environmental Costs" means Environmental Costs incurred by the CDC/Agency between August 15, 2005 and April 2, 2013 as a result of Contamination at the Site.

6. "Future Environmental Costs" means Environmental Costs incurred by the Agency after April 2, 2013 due to the Contamination of the ground water with the dry-cleaner solvent PCE at the Site.

7. "Parties" means the Agency and Beauchamp.

IV. TERMS OF SETTLEMENT AND RELEASE

1. CONSIDERATION

a. Settlement for Past Environmental Costs. Beauchamp agrees to reimburse the Agency \$27,500 to settle and compromise all Claims for payment of Past Environmental Costs for the period between August 15, 2005 and April 2, 2013. In furtherance of this compromise and settlement, Beauchamp hereby agrees to pay the \$27,500 to the Agency no later than March 1, 2014, which shall be paid on a monthly basis in the amount of \$2,750.00 commencing June 1, 2013. In the event that Beauchamp does not submit timely payment to the Agency as provided herein, interest on the unpaid amount shall accrue at 12% per annum.

b. Cooperation and Reimbursement for Future Environmental Costs. Beauchamp agrees upon execution of this Agreement to submit a payment of Five Thousand Dollars (\$5,000) as its 50% contribution to Future Environmental Costs, currently estimated not to exceed the amount of Ten Thousand Dollars.

It is hoped no further Future Environmental Costs will be incurred. In the event that the Agency is required to incur additional Future Environmental Costs above and beyond the \$10,000 currently estimated, it agrees to consult with Beauchamp on all remaining environmental activities that DEH may require at the Site. Those activities required by DEH shall be contracted for by the Agency. Beauchamp shall reimburse the Agency for 50% of all Future Environmental Costs incurred by the Agency for the activities required to investigate and remediate the Contamination at the Site. The Agency will submit tenders to Beauchamp for reimbursement as the Future Environmental Costs are incurred. The tenders will include supporting invoices documenting the costs incurred. The Agency will submit the tenders to: Beauchamp Family Trust, 327 West 11th Street, National City, California 91950.

c. Disputes Regarding Environmental Costs. Upon receipt of the tender described in Paragraph IV.1.b., Beauchamp will notify the Agency of any disputes regarding any of the claimed Future Environmental Costs in writing to Richard Oppen, Esq., Oppen & Varco LLP, 225 Broadway, Suite 1900, San Diego CA 92101, facsimile # 619-231-5853, within fifteen (15) days of receipt of the tender. The Parties agree to first work together to try to informally resolve any disputes. If such informal negotiations fail, the Parties shall then engage in mediation of the dispute. If mediation does not resolve the dispute, the Parties shall enter into binding arbitration of the dispute. The mediator and arbitrator will be mutually selected by the Parties.

Beauchamp will reimburse the Agency within thirty (30) days of successful mediation or receipt of the arbitration award. Checks shall be made payable to The City of National City. Checks will be sent c/o Mr. Bradley Raulston, Successor Agency to the Community Development Commission of the City of National City, 140 East 12th Street, Suite B, National City, CA 91950. Late payments will accrue interest at a rate of 6% per annum.

The Parties further agree that the time within which Agency must make claims to seek the cost recovery contemplated by this Agreement (including enforcement) of this Agreement is tolled from the execution of this Agreement, and that time-barred defenses by Beauchamp are waived until all Environmental Costs have been paid by Beauchamp to the Agency. If the Parties proceed to binding arbitration, the Parties preserve all rights and defenses, with the exception of Beauchamp's agreement that its status will be tolled such that in future arbitration Beauchamp will retain its status as a "responsible party" as a "current owner".

5. GENERAL PROVISIONS

m. Notices. With the exception of those notices identified in Paragraphs IV.1.b. and IV.1.c. above, all notices required or permitted under this Agreement shall be in

writing (either by mail or facsimile), and addressed to the Parties for whom it is intended at the address set forth herein or such other address designated from time to time in writing to all other Parties:

To the Agency:

c/o The City of National City
Leslie Deese, City Manager
1243 National City Boulevard
National City, CA 91950

With a copy to:

c/o Oppen & Varco LLP
Richard Oppen, Esq.
225 Broadway, 19th Floor
San Diego, CA 92101
Telephone: (619) 231-5858
Facsimile: (619) 231-5853

To Beauchamp:



The Beauchamp Family Trust
327 West 11th St.
National City, CA 91950
Telephone: (619) 477-7700
Facsimile: (619) 477-8773

With a copy to:

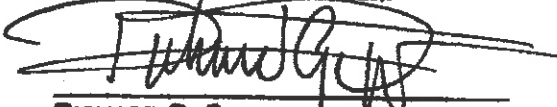
Sandra J. Brower, Esq.
Sullivan Hill Lewin Raz & Engel, APLC
550 West C Street, 15th Floor
San Diego, CA 92101
Telephone: (619) 233-4100
Facsimile: (619) 231-4372

Any notice so delivered or served shall be deemed made upon receipt by the Parties served or to whom notice is so given. Notice may also be made by electronic mail transmission or by facsimile transmission and deemed made as of the date and time of that transmission, if said notice is followed up by duplicate written notice sent by certified United States mail, return receipt requested, postage prepaid, prior to the close of the next business day.

IN WITNESS WHEREOF, the Parties enter into this Addendum which shall become effective and fully-enforceable in all respects as of the latest date that this Addendum is fully-executed by all the Parties.

<p>Dated: <u>5-29-13</u></p>	<p>SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY</p> <p>By:  Name: Ron Morrison Title: Chairman</p>
<p>Dated: <u>5-23-13</u></p>	<p>THE BEAUCHAMP FAMILY TRUST</p> <p>By:  Name: Alton B. Beauchamp, Trustee on behalf of the Beauchamp Family Trust</p>

APPROVED AS TO FORM:



RICHARD G. OPPER
OPPER & VARCO LLP
SPECIAL COUNSEL



SANDRA J. BROWER
SULLIVAN HILL LEWIN REZ & ENGEL, APLC
ATTORNEYS FOR THE BEAUCHAMP FAMILY
TRUST